

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

WEIDONG QIAN,

Plaintiff,

vs.

No. CIV 06-102 JB/LCS

EASTERN NEW MEXICO UNIVERSITY;
THE GRADUATE SCHOOL;
THE COLLEGE OF BUSINESS,

Defendants.

MEMORANDUM OPINION AND ORDER

THIS MATTER comes before the Court on: (i) Plaintiff Weidong Qian's Motion for an Order, filed January 31, 2006, in the United States District Court for the Eastern District of New York; and (ii) the Defendants' Motion for More Definite Statement, filed July 10, 2006, in this Court. The primary issues are: (i) whether the Court should enter a default judgment in favor of Qian; and (ii) whether the Court should require Qian to amend his complaint. The Court concludes that default judgment is not warranted and that Qian should amend his complaint.

In December 2005 Qian filed his federal complaint based on diversity jurisdiction in the United States District Court for the Eastern District of New York. See Doc. 1 at 3. On January 24, 2006, the United States District Court for the Eastern District of New York entered an order transferring the case to this Court because all Defendants reside in New Mexico and the events giving rise to the complaint occurred in New Mexico. See id. at 1-2. The Eastern District of New York did not issue a summons. See id. at 2. Qian filed his Motion for an Order on January 31, 2006, before the Eastern District of New York physically transferred the record to this Court.

This Court also did not issue a summons. The Defendants report that they were not served

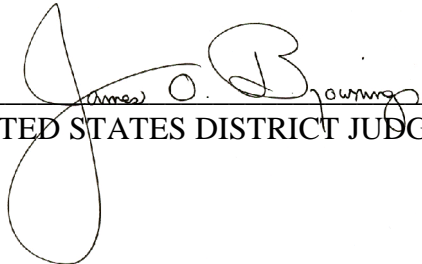
with the complaint until May 15, 2006. See Doc. 6 at 1. The Defendants filed a waiver of service on May 17, 2006. See Doc. 3. In lieu of filing an Answer, on July 10, 2006, the Defendants filed their Motion for More Definite Statement. Qian has not responded. The Defendants responded to Qian's Motion for An Order on July 31, 2006, and Qian did not file a reply.

In his Motion, Quian asserts that, because the Defendants filed no answer by January 30, 2006, to the Complaint he filed in New York, he is entitled to the injunctive and declaratory relief sought in the Complaint. The Court construes this Motion as one requesting default judgment. As the Defendants point out, however, because the Complaint was not served until May 15, because they were never served with process, and because they filed a waiver of service, the answer or response permitted under rule 12 of the Federal Rule of Civil Procedure was not due until July 15. See Fed. R. Civ. P. 4(d)(3), (4). By timely filing the Motion for More Definite Statement on July 10, 2006, Defendants have tolled the time in which they must file an answer to the complaint. See Fed. R. Civ. P. 12(a)(1)(B) & (a)(4). The Court will deny Qian's motion.

Qian has not responded to the Defendants' Motion for More Definite Statement, and under D.N.M.LR Civ. 7.6, he is deemed to have consented to this motion. The Court will give Qian an opportunity to file an amended complaint that sets forth (i) how Defendants racially discriminated against him; (ii) what events violated his right to equal protection and due process; (iii) what tortious acts support his claim for conspiracy to violate his civil rights; and (iv) the specific statutory or legal bases he relies on in bringing suit. Failure to timely file an amended complaint that complies with these instructions may result in dismissal of this action with prejudice.

IT IS ORDERED that Plaintiff's Motion for an Order is denied and Defendants' Motion for More Definite Statement is granted.

IT IS FURTHER ORDERED that Qian is granted leave until November 30, 2006, to file an amended complaint that complies with the Federal Rules of Civil Procedure and the Court's instructions.



UNITED STATES DISTRICT JUDGE

Weidong Qian
Jamaica, New York

Pro Se Plaintiff

Elizabeth L. German
Brown & German
Albuquerque, New Mexico

Attorneys for Defendants